

# RENT FRAUD

## Illegal Rent Increases and the Loss of Affordable Housing in New York City



**A Report By Make the Road New York**  
July 2011

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## Executive Summary

New York's capacity to house new generations of immigrants and to sustain a diverse population largely depends on maintaining an adequate stock of affordable housing. It is therefore critical that New York protects its rent regulated apartments. The rent stabilization laws do this by regulating how much landlords may increase the rent when existing tenants renew their leases or when new tenants move in. However, once an apartment's monthly rent exceeds \$2,500 and the apartment is vacant, the apartment is automatically deregulated, and the landlord may charge an unlimited rent. This creates an incentive for landlords to illegally raise rents in order to reach the \$2,500 limit.

By law, landlords must annually register the rent charged for each rent stabilized apartment with the Division of Housing and Community Renewal (DHCR), an agency of New York State Homes and Community Renewal. Landlords must also report rent increases taken at lease renewals or when renting to new tenants. While rent registration should, presumably, deter landlords from illegally raising rents, advocates regularly see instances of rent fraud by landlords that have gone unchallenged, even when landlords openly submitted evidence of their fraud to DHCR, year after year.

Most troubling, the clock is ticking on tenants' ability to challenge illegal rents. By law, illegal rents must be challenged within four years of the initial rent fraud. Otherwise, illegally high rents are automatically legalized, simply through the passage of time.

By analyzing rent registration histories ("rent histories") from 200 randomly selected apartments from across New York City and examining DHCR's services, this study investigates how often landlords register illegally high rents with DHCR and considers how well DHCR addresses the problem of illegal rent increases. The findings are troubling.



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## **Key Findings**

### *Rent Fraud is Widespread*

1. **64% of apartments have at least one type of irregularity in their rent histories**, whether an inflated registered rent (45% of all apartments), or a gap in registration (33% of all apartments), or both.
2. Landlords are most likely to register illegal rent increases when a new tenant moves into a vacant apartment. **62% of all instances of rent fraud occurred at a vacancy.**
3. Landlords' failure to register rents is widespread (33% of all apartments) and is linked to the subsequent registration of illegal rents. **60% of the apartments with gaps in their rent histories also had illegal rent increases registered.**
4. When there are irregularities in one unit in a building, there are usually irregularities in other units in the same building. **Of the buildings with irregularities, 65% had two or more units with problems.**

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***64% of apartments have at least one type of irregularity in their rent histories***

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### *DHCR Services are not Accessible to the Most Vulnerable Tenants*

5. **Limited English Proficient (LEP) tenants face significant language barriers when they interact with DHCR.** DHCR's official correspondence with tenants is only in English; few materials on DHCR's website are translated into other languages; and 83% of calls to the Spanish language phone line were not answered by a staff person.
6. DHCR takes too long to process rent overcharge complaints. **Current complaint processing times can be a year or more.**
7. **Cuts in tenant services have been disproportionately greater than cuts in landlord services.** In the last five years the numbers of DHCR staff handling tenant rent overcharge complaints declined by over 30%, compared to a decline of 21% of employees handling landlord applications.

In light of these findings, what is most concerning is the fact that DHCR has no system in place to automatically detect or investigate instances when landlords register illegally high rents or fail to register rents at all. Although DHCR accepts, processes, and records rents that are on their face illegal, the agency does nothing with this information. Rather, DHCR depends entirely on tenants – those least likely to know the law, their rights, or how to discover an overcharge – to file a complaint before the agency will take any action at all.

The above findings show that DHCR's complaint-driven enforcement strategy is failing to address the widespread rent fraud that is depleting New York's affordable housing stock and harming vulnerable tenants.

When the New York state legislature renewed the rent regulation laws in June 2011, it had an opportunity to ensure the preservation of New York's affordable housing stock. While the rent laws were strengthened in some ways, the strengthening amendments represented only minor changes in the law. This insufficient action on the part of the legislature means that it is more important than ever that DHCR proactively enforce New York's rent regulation laws. Proactive enforcement by DHCR is the only way to prevent the illegal deregulation of affordable housing.

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## **Key Recommendations**

### *Proactive Enforcement*

1. DHCR's rent registration database should be programmed to **automatically detect illegal rent increases** registered by landlords or failures to register rents. Any illegal increase, whether at a lease renewal or a vacancy, should trigger an investigation by DHCR, without the need for a tenant complaint. Any failure to file a rent registration should also trigger an investigation by DHCR and assessment of maximum penalties.
2. Where DHCR confirms one illegal rent increase by a landlord, DHCR should **proactively audit** the rents of other apartments in the same building and the rents in other buildings owned by that landlord.

### *Effective Communication with Tenants*

3. DHCR should **proactively communicate with tenants**. DHCR should send an annual letter to rent stabilized tenants informing them of the most recent rent registration filed by their landlord, the legal rent at that time, and explaining the process for filing a complaint if the tenant is paying more than the legal rent.
4. DHCR should **improve language access** for LEP tenants, including more translations of web-content and informative materials, more multi-lingual staff, and conducting language-appropriate communications with tenants.
5. DHCR should **collaborate with community-based organizations** that have ties to vulnerable tenant populations. This should include coordinated outreach, especially to new immigrant communities, and the acceptance of complaints from community groups working with rent-stabilized tenants that can alert DHCR to rent fraud.

### *Improved Complaint Processing*

6. DHCR should improve its handling of rent overcharge complaints. This includes **reducing complaint processing times, increasing the number of staff** investigating tenant complaints, and improving complaint forms.

These modest changes to DHCR's enforcement approach are critical. As the findings of this study demonstrate, a system of enforcement that is entirely driven by tenant complaints is failing to address the problem of rent fraud.



## About Make the Road New York and this Report

Make the Road New York is an 8,800 person-strong membership organization that builds the power of Latino and working class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services.

Make the Road New York provides extensive housing-related legal services to hundreds of low-income tenants each year. The impetus for this report came from our experience representing these tenants and seeing first-hand instances of rent fraud by landlords that went unchallenged, even when landlords submitted *direct evidence of their fraud to DHCR itself year after year*.

Although there is broad consensus among housing attorneys and housing policy advocates that the problem of illegal rent increases is significant, to our knowledge this is the first study that investigates the problem by systematically analyzing a large number of rent histories over time and from a variety of neighborhoods and buildings of different sizes.



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## Background

The population of New York City grew from 7 million in 1980 to over 8 million by 2010, and it is projected to exceed 9 million before 2030. According to *The Newest New Yorkers* report by the City Planning Commission, all of the population growth in the past decade can be attributed to immigrants; the native-born population actually declined. Today, immigrants and the children of immigrants account for more than 60 percent of the population in New York City. The Planning Commission notes, “New York City has averted catastrophic population losses that have occurred in other cities.” In other words, growth through immigration has literally saved New York City from abandonment.<sup>1</sup>



New York City’s housing supply has not kept pace with its surging population, leading to high prices, overcrowding, and homelessness. Even with a high level of residential construction in the City over the past decade, the number of housing units does not meet the needs of the City’s growing population. Furthermore, very few of the new units are affordable to low- or moderate-income households. Over the past five years, the city has also seen the dramatic loss of over 300,000 affordable housing units, both through the expiration of affordability requirements on subsidized units (Section 8, Mitchell-Lama) and through rent increases on privately-owned units.

The 2005 *State of NYC Housing and Neighborhoods* report casts the strain this puts on low-income households in sharp relief. This study shows how rent burdens for low-income tenants have been rising steadily for years. In just the three years from 2002 to 2005, the median rent burden as a percentage of income for low-income households without a housing subsidy rose from 43% to over 50%.<sup>2</sup> According to the annual Community Service Society survey of low-income New Yorkers, the percentage of low-income households facing one or more housing hardships (falling behind in rent or mortgage payments, utility cut-offs, doubling-up, or seeking shelter), grew from 36% to 52% from 2002 to 2006.<sup>3</sup>

Immigrant communities – whose growth is largely responsible for saving the city from abandonment and buttressing the housing market – are particularly hard hit by the housing crisis. While immigrants make up 43% of the city’s workforce, they are two-thirds of the city’s low-wage workers. Many have limited English proficiency (2 million of New York City’s population of 8 million) and/or are undocumented, putting them at the mercy of unscrupulous landlords. They are less likely than other New Yorkers to live in publicly-subsidized affordable housing. According to a 2011 study by Community Service Society, immigrants – and especially immigrants of color – are more likely to live in illegal and substandard housing, face discrimination, and pay a higher portion of their income for rent.<sup>4</sup>

The disparity between income and rent has left many immigrants with little to no choice but to remain in substandard and dangerous housing provided by negligent landlords.

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In addition to the housing crunch, language barriers are an obstacle to safe and affordable housing options for immigrants. In May 2006, Make the Road New York and other housing advocates published *Hear This: The Need for Multilingual Services in New York City*. The report showed that many immigrants and tenants with limited English proficiency are living in unhealthy and unsafe living conditions, and yet, more than 60 percent of them do not know that there is a city agency dedicated to addressing their housing needs.

## **Rent Regulation in New York State**

Rent regulated apartments in New York include both rent controlled and rent stabilized housing. New York's rent stabilization laws were enacted in 1969 in response to rising rents in many post-war buildings. These rents laws protect tenants from sharp rent increases while also guaranteeing their right to renew their leases. The number of rent regulated apartments in New York City is still immense, comprising about 49% of all rental households at the time of the last US Census Bureau Housing and Vacancy Survey in 2008. At that time, there were still approximately 40,000 rent-controlled apartments and over one million rent stabilized apartments.<sup>5</sup>

Although rent regulation was initially designed to prevent excessive rents resulting from the city's chronic housing shortage, rather than as a low-income housing program, it does reach a population whose incomes suggest a greater need for protection than other residents. In fact, the most important component of New York City's housing stock for low-wage workers is rent-regulated housing: more than a million low-income people (in households with incomes below twice the poverty level) live in rent-regulated housing, compared to a little over half a million in public and subsidized housing combined.<sup>6</sup>

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***Escalating rents in stabilized apartments pose a serious threat to the stock of affordable housing.***

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The Division of Housing and Community Renewal (DHCR), an agency of the New York State Department of Homes and Community Renewal, administers and enforces rent regulation, as per the 1983 Omnibus Housing Act. Landlords of rent-regulated buildings are required to register the rents of their rent-stabilized apartments and the name of the tenant of record each year with DHCR. Registrations must also report increases taken at vacancies as well as other increases.



Each year, the New York City Rent Guidelines Board (RGB) sets the allowable percentage increase for renewal leases. Renewal increases typically range from 2% to 4.5% for a one-year lease, or 4% to 8.5% for a two-year lease. After a vacancy, the law permits the landlord to increase the rent up to 20% when renting to a new tenant, depending on whether the new tenant enters into a 1 or 2 year lease. There is also an additional "longevity increase" that landlords may take, if no vacancy increase has been taken for ten years or more.

With prior approval from DHCR, landlords may also add a portion of the cost of performing major capital improvements (MCI's) in a building (such as a new

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roof or boiler) to the rent of each apartment. The law limits the permitted annual MCI increase to 6% of the apartment's legal rent. Without any government approval or oversight, landlords may also add a portion of the cost of renovations made to individual apartments to the monthly rent. In buildings with 35 or more units, the allowable portion is 1/60th of cost of the renovations; in buildings with less than 35 units, it is 1/40th. These are known as individual apartment improvement increases (IAI's) - although if renovations are performed during the course of a tenancy, the tenant must give prior written approval for the work.

## **Escalating Rents and Loss of Regulated Units**

The last decade has seen an unprecedented rise in rents in New York City, and much of this rise has been borne in the neighborhoods outside of central Manhattan. According to the U.S. Census Bureau's Housing and Vacancy Survey, conducted every three years, rents rose by 51% between 2003 and 2008 in Upper Manhattan and by 39% in inner Queens and Brooklyn, compared to only 29% for Manhattan below Harlem. In the period from 2005 to 2008, the fastest increase occurred in inner Queens and Brooklyn—22% in just three years. Rents have continued to rise even during the recession.<sup>7</sup>

Escalating rents in stabilized apartments pose a serious threat to the stock of affordable housing. Until recently, when an apartment's monthly rent reached \$2,000 and a new tenant moved in, the apartment was automatically exempted from rent regulation laws and a landlord could charge market rents. Between 2005 and 2008, New York City lost about 43,000 or 4% of its rent-regulated units, according to the most recent New York City Housing and Vacancy Survey. As of July 2011, this threshold was raised to \$2,500, but this will only save a small fraction of the affordable apartments being lost through this type of deregulation. Vacancy deregulation was first created in 1993. The \$2,000 threshold then chosen by the legislature would be equivalent to approximately a \$5,000 threshold now. Thus, the recent increase in the deregulation threshold does little to prevent the widespread loss of affordable housing.<sup>8</sup>

Limitations on tenants' ability to challenge illegal rents have exacerbated this escalation of rents and the fraudulent deregulation of numerous apartments. The 1997 Rent Regulation Reform Act made it much more difficult for tenants to pursue rent overcharge claims and much easier for landlords to get away with illegal rent increases in rent stabilized units. Under current laws, DHCR or the courts determine the legal rent for a unit by looking at what the rent was four years prior to the date that the rent overcharge/illegal rent complaint was filed. The laws also state that landlords are not required to provide any records or information that is older than that four year period. Furthermore, DHCR and the courts are actually prohibited from examining an apartment's rent history beyond the four year period. This means that generally if an illegal rent is not corrected within four years, it becomes the legal rent.<sup>9</sup>

As the complaints process is entirely tenant-driven, many illegal rent increases go undetected for more than four years. The result is that illegal rent increases frequently become legal simply due to the passage of time.

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## The Goals of This Study

In the current economic climate, it is more important than ever to protect tenants from illegal rent overcharges. Elevated rents can lead to evictions and homelessness, and can cost families hundreds of scarce dollars each month that could be spent on necessities, such as nutritious food or school supplies. While potentially devastating for tenants, escalating rents and displaced tenants also put a greater burden on public services such as city homeless shelters and other emergency housing services. This issue is critical to our city.

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This study was prompted by the experiences of MRNY members, organizers, and lawyers. It was our experience that many rent regulated tenants had been overcharged and their landlords had registered the inflated rents for their apartments with DHCR. Many of these same tenants did not realize there was a problem until they obtained legal advice from Make the Road New York's attorneys. In too many cases this advice came too late to fix the problem – because the initial overcharge occurred more than four years earlier. Given the extremely limited legal resources available to low-income tenants, this

raised a serious concern that rent fraud by landlords was in fact endemic, that it was not remedied in many cases because tenants did not realize there was a problem, and thus, that DHCR's enforcement strategy was failing.

This study set out to investigate the following questions:

- Are landlords in New York City registering rents for rent stabilized apartments as they are required to do by law?
- How widespread is the problem of rent fraud and overcharges by landlords?
- What kinds of rent fraud are most common?
- How well does DHCR address the problem of unlawfully high rents?
- What is the experience of tenants and advocates who interact with DHCR, in particular when filing rent overcharge complaints?

In order to answer these questions, first, we analyzed rent histories from 200 units in Brooklyn, the Bronx, Queens and Manhattan to determine whether the registered rents were higher than permitted by law. Second, we interviewed tenants and advocates about their experiences with DHCR. Third, we tested DHCR phone services, examined agency materials and visited agency facilities to determine language accessibility for Limited English Proficient (LEP) tenants. And fourth, we analyzed data obtained from DHCR in order to identify changes in staffing over the last two decades.

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## Findings: Common Problems with Rent Histories

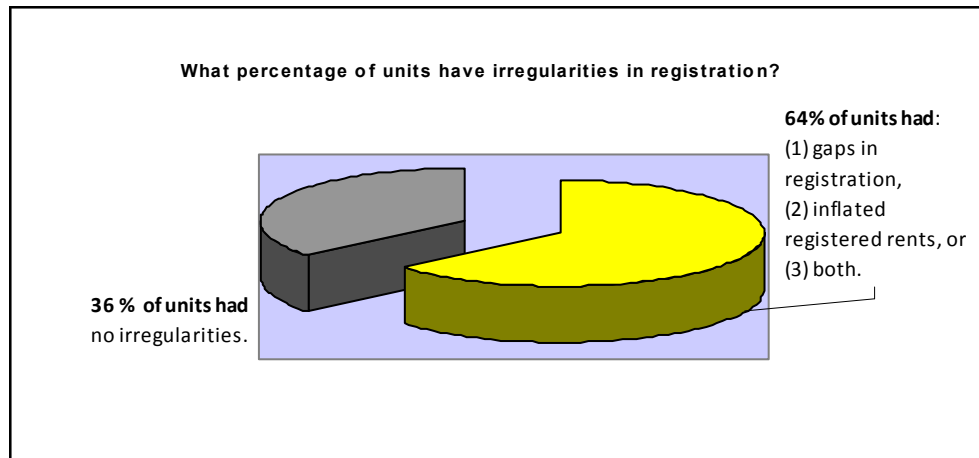
Based on an extensive examination of the information contained in 200 tenants' rent registration histories, we found the following common problems:

1. **Excessive Rent Increases with No Explanation:** Often, landlords of rent stabilized buildings register rents with DHCR at an amount above what is allowable under the law, without providing any explanation that might otherwise justify an increase beyond the RGB renewal increase or the allowable vacancy increase.
2. **Landlords Fail to Register Rents:** It is common for landlords not to register the rents for their rent stabilized apartments with DHCR at all, for years on end. After multiple years of failing to register an apartment's rent, landlords often unlawfully increase the rent when they finally do register. In fact, 61% of apartments with gaps in their registrations also had inflated rent registrations in their history.
3. **Inflated Vacancy Increases:** When a tenant moves out of a rent stabilized apartment, a landlord is permitted to raise the rent up to 20% (depending on the length of the lease entered into by the new tenant). There is also an additional longevity increase that landlords may take where no vacancy increase has been taken for ten years or more. Many landlords, however, raise the rent in excess of the allowable vacancy increase without justification.
4. **Inflated Renewal Increases:** Often, landlords raise the rent above the allowable amount upon renewal of a lease. In addition, landlords often register illegal rent increases to set a higher legal rent for the apartment on record, even though the tenant is being charged the lawful increase. This benefits the landlord in the long-term because it creates a higher legal regulated rent for the apartment.
5. **Major Capital Improvements (MCI's):** Landlords will sometimes attribute an illegal rent increase to an MCI increase allowed when a landlord has performed major repair work – for example, roof replacement – on the building. MCI's must be major repairs that affect the entire building, as opposed to IAI's, which are in an individual apartment. Although landlords are allowed to raise tenants' rents following an MCI, they may only do so by an annual maximum of 6% of the legal regulated rent and they must seek approval – after the repairs have already been made – from DHCR. Landlords will often cite an MCI but then will raise rents more than the 6% maximum.
6. **Individual Apartment Improvements:** When landlords renovate apartments during a vacancy, they can also add a percentage of the cost of the renovation to the monthly rent charged to the new tenant (1/60th in buildings with 35 or more units, 1/40th in buildings with less than 35 units). These individual apartment improvement increases (IAI's), can be hard to detect because a new tenant typically has no idea how much work was done on an apartment during a vacancy. They therefore usually go unchallenged. If a landlord does an IAI when an apartment is vacant, nothing needs to be filed with DHCR to substantiate the IAI. Since no verification is required for IAI claims during a vacancy and the new tenant is unlikely to challenge the IAI claim, false or inflated IAI claims are one way for landlords to illegally raise rents without repercussions. (Note – the only way a landlord can take an IAI increase when an apartment is occupied is where the tenant signs off on it.)

## Findings: Registered Rents

1. **More than half of all units (64%) displayed at least one type of irregularity in their rent histories, whether an inflated registered rent or a gap in registration. Of the units with illegal rent increases registered, the average cumulative dollar amount of illegal rent increases is \$5,009 per unit, with an average monthly illegal rent increase of \$211.** In addition, rent fraud often persists unaddressed for long periods of time, on average for a period of 2 years and 4 months.

Figure 1



2. **In almost half of all of units (45%), rent histories show registered rents above the legal amount.** This 45% does not include the substantial number of units (an additional 12%) in which we found that landlords failed to register any rents in recent years, making it impossible to determine the existence of rent fraud. One out of four units had illegal rent registrations which occurred in the past 4 years. Note – the percentage of actual rent overcharges may be even higher than 45% because landlords may register a legal rent with DHCR, but in reality charge the tenant a higher amount. DHCR does not corroborate that the amount registered by the landlord is the amount actually paid by the tenant unless the tenant files a complaint.
3. **Landlords' failure to register rents (as required by law) is widespread, with 33% of units showing gaps in registration in their rent histories.** One egregious example of lack of registration is an apartment at Knickerbocker Avenue in Brooklyn. In 1998 the landlord registered the Legal Regulated Rent as \$487.41. Then from 1999 through 2003 the landlord failed to register anything for this unit. Then in 2004 the landlord registered a Legal Regulated Rent of \$1,574.00 and cited a "vacancy lease" as the reason for the rent increase. No IAI's or MCI's were claimed. This amounts to a 223% vacancy increase, based on the last rent registration for this unit in 1999. After that, in 2007 and 2008, the landlord again failed to register the rent for this unit. Judith Goldiner, Supervising Attorney in the Legal Aid Society's Law Reform Project, Civil Practice, commented:

*A big part of the problem of illegal rents stems from landlords failing to register rents. This makes it very difficult for tenants to know if their rent is legal. Also, with the four year rule, landlords can more easily get away with illegal increases or even deregulation if they miss registrations. This is especially true where a new tenant moves in and has no way of proving what the rent was during the years that are missing registrations.*



4. **More than half (61%) of units with gaps in their registration history also had inflated registered rents.** Statistical analysis shows that after adjusting for building size, units with gaps in registration in their rent histories are 2.6 times more likely to have unlawfully high registered rents.

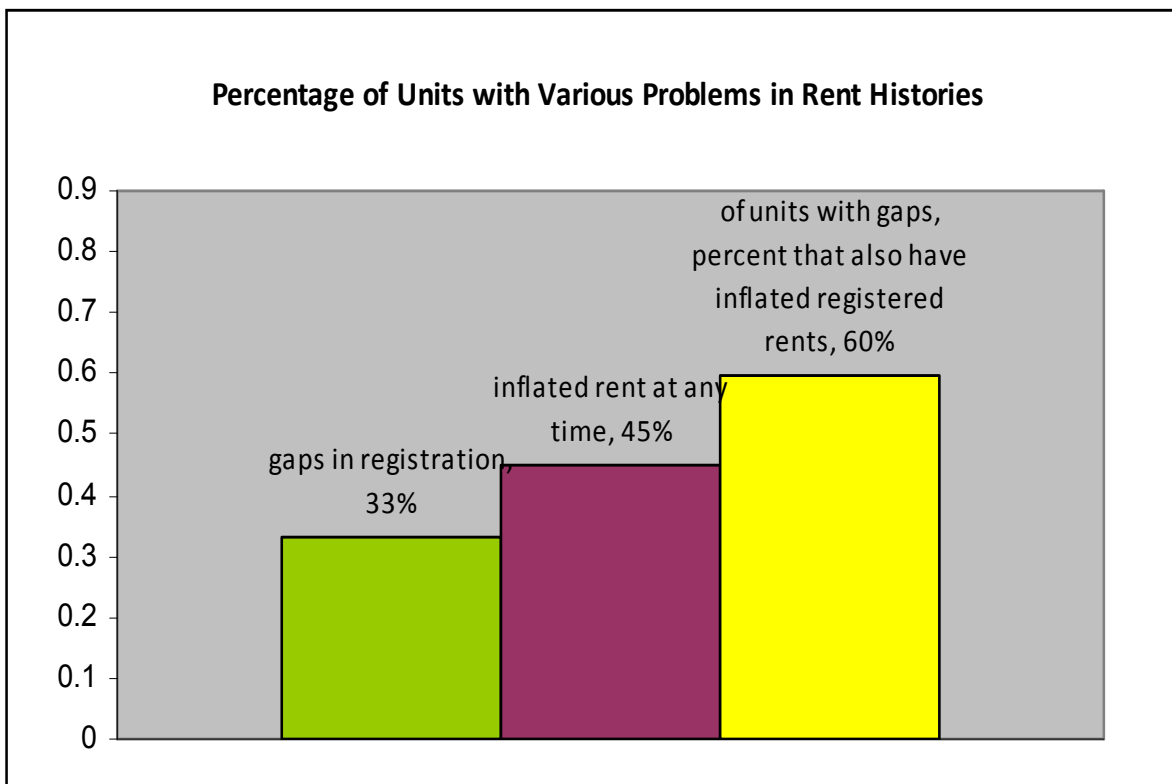
**Case Study: Maria de los Santos, Menahan Street, Brooklyn**

In 1992, the landlord registered a legal regulated rent for this unit of \$369.47, but also registered that previous tenants were paying an additional \$423 due to an MCI. If this amount reflects what the tenants were actually paying, they were being charged more than the allowable 6% increase that the landlord is allowed to charge for an MCI. Then, from 1993 to 2005, the landlord failed to register any rents for this unit. Maria de los Santos moved into the unit in 2005.

In 2008, the landlord retroactively registered a legal regulated rent of \$900 for the years 2006, 2007 and 2008. For the year 2008, however, the landlord registered that Maria was actually paying \$1,050.

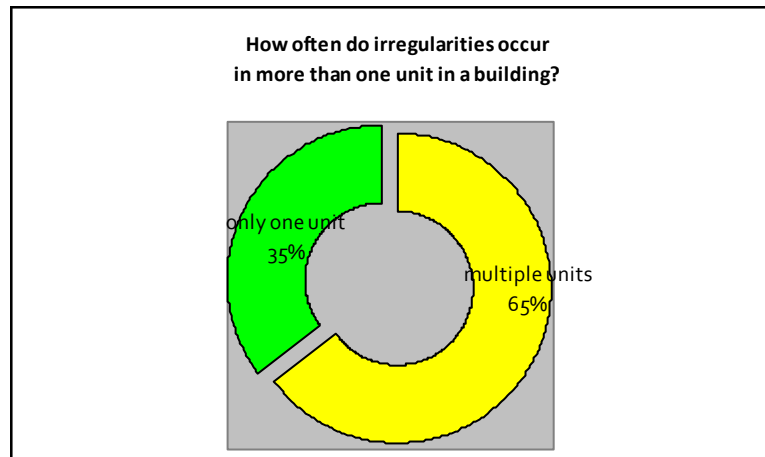
Maria has confirmed that this was, in fact, the amount of rent that was being paid. From October 2007 to April 2010, Maria paid \$1,050 per month instead of the legal regulated rent of \$900. With Make the Road New York's assistance, Maria filed a rent overcharge complaint with DHCR. On March 24, 2011 DHCR issued a determination that Maria had been overcharged a total of \$3,444 and ordered the landlord to pay treble damages.

**Figure 2**



5. **If there are irregularities in one unit, there are usually irregularities in other units in the same building. Of buildings with irregularities, only 35% had just one unit with irregularities while 65% had two or more.** In addition, the number of irregularities in a building is a statistically significant predictor of irregularities in any given unit, when controlling for building size and the percentage of units for which rent histories were available. (See Appendix D for table.)

**Figure 3**

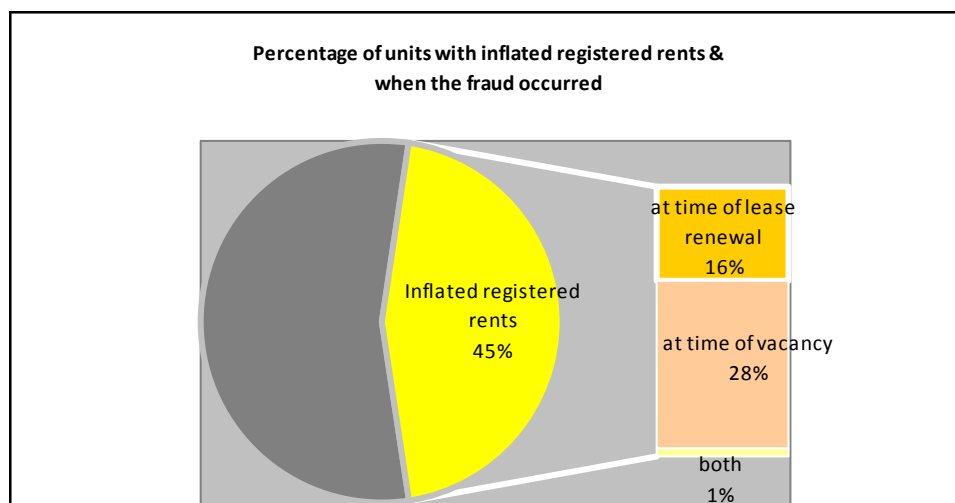


6. **Rent fraud most commonly occurs at the moment when an apartment is vacant and turned over to a new tenant.** This type of rent fraud represents 62% of the cases of fraud we identified. In one unit at 37th Ave in Flushing, a registered tenant's lease with a monthly rent of \$909 ended on January 31, 2010, according to the landlord's registrations. Then a new tenant commenced a lease on April 1, 2010. In July 2010 the landlord registered that the new Legal Regulated Rent pursuant to that lease was \$1,700. The landlord explained the increase by claiming a vacancy increase. There were no IAI's or MCI's claimed. This was actually an 87% increase in the legal regulated rent, that is, 67% more than the allowable 20% vacancy increase.

According to Edward Josephson, Director of Litigation at South Brooklyn Legal Services, this kind of fraud is both common and frequently undetected:

*So often, tenants who are the victims of big overcharges are new tenants. Landlords take advantage of the fact that the new tenant probably won't know what the last tenant was paying. They can take more than the legal vacancy increase and usually no one will find out.*

**Figure 4**



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7. **MCI's and IAI's are often used as a pretext for rent fraud.** Often, landlords wishing to increase the rent will submit an application for a rent increase based on an MCI. Rob McCreanor, Director of Legal Services at the Catholic Migration Office has represented tenants in DHCR rent overcharge cases for more than 10 years. When he has worked with tenants to challenge MCI applications, they have won their cases in almost every instance because landlords are unable to provide proper documentation. However, McCreanor says that most tenants are not able to defend themselves from this type of fraud because the process at DHCR is heavily skewed in favor of the landlord. He describes the process in the following way:

*When a landlord applies for a rent increase for a Major Capital Improvement (MCI), DHCR cannot just approve the MCI if tenants object. DHCR is required to send a form to the tenant to solicit objections. However, that form provides no information about the MCI process or the tenants' rights with regard to MCI's. It doesn't tell people what the criteria are for objection. In contrast, if you look at the forms that DHCR sends to landlords, the forms are actually really helpful, providing useful and detailed information about the MCI process.*

Marika Dias, Supervising Attorney at Make Road New York, reports that IAI's are also frequently used as the basis for rent fraud when a new tenant is moving into an apartment:

*Falsely claiming IAI's at the point of vacancy is a very convenient way for a landlord to get away with an illegal rent increase. DHCR doesn't ask for any verification and the incoming tenant usually has no idea what condition the apartment was in previously so they won't challenge the IAI increase - many don't even know the landlord is claiming an IAI increase. I have heard landlords and their attorneys at housing court openly talk about using IAI increases to deregulate apartments, without any regard for the actual renovations they would lawfully need to do.*

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## Findings: Enforcement Practices and Policies

1. **DHCR's complaint-driven enforcement process is inadequate.** Currently, when a landlord submits a rent registration, it is not checked by DHCR – even when the information, on its face, indicates rent fraud. Registered rents are only subject to review if a tenant files an overcharge complaint with the agency or claims a rent overcharge in Housing Court or in Supreme Court. Even in the most egregious cases, DHCR will not act until a tenant files a formal complaint with the agency; and when multiple tenants in the same building file similar meritorious complaints, DHCR does not audit the other apartments in the same building, or in other buildings owned by the same landlord. Marika Dias, Supervising Attorney at Make the Road New York commented on DHCR's lack of proactive enforcement:

*The fact that DHCR receives proof of illegal rent increases and does nothing about them defies belief. DHCR receives hard evidence of illegal increases from landlords themselves and yet, unless a tenant complains, DHCR does nothing with that information. All it takes is for four years to pass by and that illegal rent will be lawful. Another apartment will be unaffordable or even deregulated and DHCR could have prevented it. That's what makes this such a terrible situation.*

Angel Vera, Housing and Environment Justice Organizer at Make the Road New York made the following observation:

*The landlords are the ones committing rent fraud, but DHCR is part of the problem too because they don't do anything to tell tenants when their landlords are registering illegal rents. In my years as a housing organizer, I have worked with many tenants who are being overcharged. Their landlords register illegally high rents with DHCR but DHCR never informs tenants that they are being overcharged.*

2. **DHCR fails to impose penalties on non-compliant landlords.** If a landlord does not register rents for a building, he or she is rarely, if ever, penalized in any way. While a landlord is not supposed to collect rent increases in years for which rents have not been registered, in practice DHCR only enforces these “rent freezes” if a tenant complains. By law, landlords are permitted to submit retroactive registrations and the legal regulated rent of a unit is not affected at all by a landlord's failure to register rents. The only impact of not filing registrations, therefore, is that the landlord should not be collecting the relevant rent increase for as long as that rent was not registered with DHCR. However, even this is not enforced. In essence, the current system, with its lack of oversight and reliance on tenant-initiated complaints, allows problem landlords to ignore the requirement to file registration statements with minimal fear of being held to account.

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***... I have worked with many tenants who are being overcharged. Their landlords register illegally high rents with DHCR but DHCR never informs tenants that they are being overcharged.***

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**Case Study: Linden Street, Brooklyn**

The landlord did not register this apartment from 1984 through 1987, from 1991 through 1994, or from 1998 through 2000. The rent increases registered for this apartment were consistently problematic. Up until 2002, every time the landlord did file a registration, it was a round number - indicating probable fraud, given that lawful increases are based on specific percentage calculations. All of the rent increases registered were completely arbitrary and bore no relation to the RGB authorized increases.

In 2002, the landlord registered that a tenant was paying a legal regulated rent of \$750. In 2003, the landlord registered that the apartment was empty, but claimed a vacancy increase of 20%. In 2004, the landlord registered that the apartment was still vacant, but claimed another vacancy increase of \$100 – in other words, an additional 11%. In 2005, the landlord did not register a rent for the unit. On September 24, 2008, the landlord retroactively registered that the apartment was still vacant in 2006, but this time registered a 95% increase, claiming an additional vacancy increase, MCI's and IAI's.

By this time, the current tenant, Rosa Criollo, was living in the apartment. She moved in February 2007 and confirms that the apartment had not been renovated when she moved in. On September 24, 2008, the landlord also registered the same inflated legal regulated rent for the year 2007. In this registration, Criollo is named as the tenant and the landlord notes a preferential rent of \$1,400. Criollo confirms that this is the amount she was paying. However, her lease contains no reference to a preferential rent and cites \$1,400 as the legal regulated rent for the apartment.

With the help of MRNY, a DHCR rent overcharge claim has been filed, however, its determination is still pending. This case illustrates the failure of DHCR to proactively enforce the law over a 25 year period, even as blatant evidence of fraud was being registered with DHCR, and the grave consequences of DHCR's long-term inaction.



## Findings: Language Access

Feedback from tenants regarding their interactions with DHCR indicates that access to DHCR services is a particular problem for Limited English Proficient (LEP) tenants. “DHCR was never able to provide me with adequate services in Spanish. On the few occasions I encountered an employee who spoke my language, the customer service was unsatisfactory. The services over the phone are even worse; the Spanish phone line is little more than an answering machine,” reported Leandra Requena, a member of Make the Road New York and a tenant from Queens.

1. **Official correspondence with tenants by mail occurs only in English:** All official correspondence from DHCR is conducted only in English, making it nearly impossible for LEP tenants to file effective complaints. This is especially troubling because DHCR requires written responses from tenants when processing certain rent adjustments, such as objections to MCI applications or in rent overcharge complaints. Inadequate language access results in a higher likelihood of fraudulent rents going unaddressed for LEP tenants. Moreover, DHCR does not have a mechanism in their case tracking system to indicate the primary language spoken by a tenant and to ensure that future correspondence to that tenant is conducted in that language.

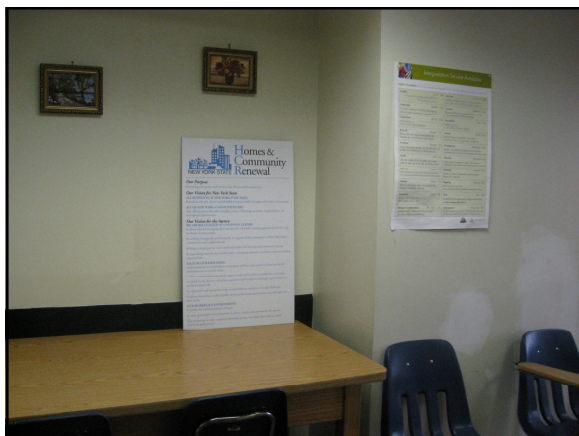
2. **83% of Spanish-speaking callers to DHCR’s main phone number were not able to reach a Spanish-speaking staff person.** Although DHCR has an automated Spanish language option on its main number (“Press 2 for Spanish”), in practice, tenants are rarely able to speak with a Spanish-speaking staff person. In most instances, the calls of Spanish-speaking tenants are picked up by an answering machine which requires them to leave a message. When this happens, in many cases tenants do not receive a return call after leaving a message.

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*I asked if anyone spoke Spanish and the employee said “I don’t know” and kept walking. So I went home.*

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3. **DHCR offices lack adequate numbers of multi-lingual staff.** Tenant feedback indicates that LEP tenants have difficulty obtaining services when they attend DHCR offices. Maritza Guaman, a tenant from Brooklyn and member of Make the Road New York, reported that she was not able to obtain a copy of her rent history because she could not find someone to help her in Spanish. “I asked if anyone spoke Spanish,” she said, “and the employee said ‘I don’t know’ and kept walking. So I went home.” “I couldn’t find anyone who spoke Spanish, or materials or information in Spanish,” reports Marcelo Cando, a tenant from Queens and a member of Make the Road New York. “I would like there to always be someone there who speaks my language and for them to be willing to help tenants feel comfortable, because that’s why the agency exists - to help tenants.”



4. **Signage at DHCR offices is limited to English.** The vast majority of signage at DHCR offices is in English, making it difficult for LEP tenants to obtain the assistance they need. “I could not find any signs or materials to explain the information I needed,” said Maria Cortes, a tenant from Brooklyn and member of Make the Road New York, “and the employee who helped me was rude to me.”

5. **DHCR’s website contains very little content in languages other than English.** A small fraction of documents are translated into Spanish on the DHCR website. No languages other than Spanish and English are used on the website.

## Findings: Customer Service for Tenants

1. **DHCR's customer service practices favor landlords, making it difficult for tenants to effectively exercise their rights.** The complaint process is extremely difficult and time consuming, and requires at least some knowledge of the laws governing rent-stabilized rent increases and tenants' rights. Many tenants who do not have access to legal representation struggle to get their needs met at the agency.

Leandra Requena, a tenant in Queens, had a long history of problems with substandard conditions in her apartment and negligence by her landlord.

DHCR has the ability to authorize rent reductions if the landlord is not providing basic services and repairs. Requena attempted to obtain help from DHCR and describes the difficulty she had in navigating the system:

*I went to DHCR at the beginning of 2008. I explained all the problems to someone there. The person I spoke to told me to fill out a form and he gave me the form to fill out. I did exactly what he told me to do, because I trusted that he knew what he was talking about. But it turns out that it was the wrong form. What I should have filled out was an Application for a Rent Reduction because of all the problems in the apartment, but what I filled out was a request to see if there was an illegal rent overcharge. Six or seven months later I received a letter from DHCR saying that I was paying the correct amount of rent, that there was no overcharge. But that was not my problem in the first place!*

Some tenants who visit DHCR offices report that staff use curt language and do not fully explain to tenants what is going on. One MRNY member, Marcelo Cando said, "When I went to the DHCR office in Jamaica they acted like they didn't want to help me." This can be especially detrimental to immigrant communities, who are more susceptible to aggressive landlords because of a lack of knowledge of their rights.

In addition, DHCR does not do anything to address the disadvantages faced by tenants in cases where one side has legal representation and is knowledgeable (usually the landlord), and one side is not (usually the tenant). Tenants' disadvantage in these cases is exacerbated by the fact that this area of law is procedurally and substantively complex.

In fact, many tenants and advocates have observed that DHCR's practices actually favor landlords' needs. Rob McCreanor explains:

*DHCR holds landlords' hands and supports them through the process to apply for a rent increase. I believe there is an equal protection issue. There is a real disparity in the way that tenants and owners are treated in these proceedings.*



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2. An even more fundamental problem is that many tenants have never even heard of DHCR. Luis Pelaez, a tenant who has an overcharge claim against his landlord said:

*Before I went to Make the Road New York, I had no idea that I was being charged too much rent. I had never even heard of DHCR so it never would have occurred to me to go to DHCR for help. There are a lot of tenants who are being exploited by their landlords in this way and don't even know that there is a government agency which is supposed to be protecting our rights as tenants.*

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***I had never even heard of DHCR so it never would have occurred to me to go to DHCR for help***

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Another tenant, Maria de los Santos, describes a similar situation:

*Before talking to the lawyers at Make the Road New York, I had never heard of DHCR. I didn't even know that I live in a rent regulated building. I would not have known to keep copies of my rent receipts and it would have been extremely difficult to handle a case at DHCR on my own. I don't think it would have been possible for me, as a tenant, without an organization like MRNY to guide me through the process. I'm glad that MRNY was able to help me with my case, but it's not fair that other tenants don't get the help they need and deserve without an organization like MRNY to advocate for them. All tenants should be protected by DHCR from illegal rent overcharges.*

Gladys Puggla, a member of Make the Road New York, reported the following:

*I live in Brooklyn, in the neighborhood of Bushwick; I've lived there for 12 years. One night, I went to a tenants' meeting at Make the Road New York with a neighbor. We live in a rent-regulated building and they explained to us our rights as tenants. Before that night, I had never heard of DHCR. There are many other tenants here in Bushwick like me, who have never heard of DHCR. I know because I have gone out knocking on doors and passing out flyers to talk to other tenants, and I can tell you that most of them don't know anything about DHCR. DHCR should do more to make sure that tenants are aware of their rights and what DHCR can do to help them because, the way things are now, landlords are taking advantage of tenants by charging illegally high rents and DHCR isn't doing anything to stop them.*

The experiences of tenant advocates confirm these reports. Angel Vera, Housing and Environmental Justice Organizer at Make the Road New York, explained:

*In my work, I come across low-income tenants on a daily basis. In my experience, most tenants have never heard of DHCR before they come to our organization. Whenever we talk about DHCR in committee meetings, new members usually have no idea what DHCR is or what it does. As a housing organizer, I also facilitate tenant meetings at different buildings. It's very rare to meet a tenant who knows about DHCR. Most of the time, nobody at the building meeting has ever heard of the agency.*

Many tenants are also unaware of the rent information collected by DHCR from landlords. Edward Josephson, Director of Litigation at South Brooklyn Legal Services observed, "Almost all the tenants I have advised had no idea about the rent registration system or about getting their rent registration history until I told them about it. And the vast majority of tenants never speak to a lawyer."

## Findings: Administrative Backlog and Inadequate Staffing

1. **Cases take years to resolve, exacerbating problems of overcharge and displacement.** According to Rob McCreanor from the Catholic Migration Office, it is not uncommon for a case to take over 2 years. He says, “During that time, tenants are paying more rent than is legal -- often thousands of dollars more in rent than they can afford, and eviction proceedings are started against them. I’ve seen many tenants be evicted before DHCR even gets around to reviewing their case”.

Delays at DHCR can have serious consequences for the day-to-day lives of tenants. Maria de los Santos, who is owed over \$10,000 as a result of rent overcharges, recounted the impact on her life, “We had no response from DHCR at all for more than a year. That whole time, the landlord has continued to harass me and pressure me to drop the case.”

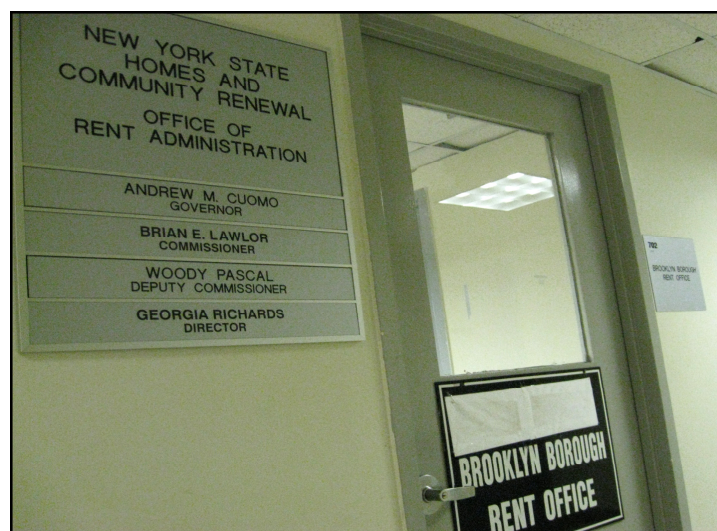
Leandra Requena, who has been waiting for almost two and a half years for a response from the agency, described her experience in this way:

*In December 2008, I filled out an Application for a Rent Reduction. I never got any response from DHCR. I called over and over. Many times I couldn’t even get through. When I was able to speak to someone about my case, they always said they couldn’t do anything until they sent an inspector but they never sent the inspector. I asked them how it was possible for so much time to have gone by without them sending an inspector and all they said was that they didn’t have enough inspectors.*

To date, two and a half years after she filed her claim, DHCR has still not sent an inspector to Requena’s apartment.

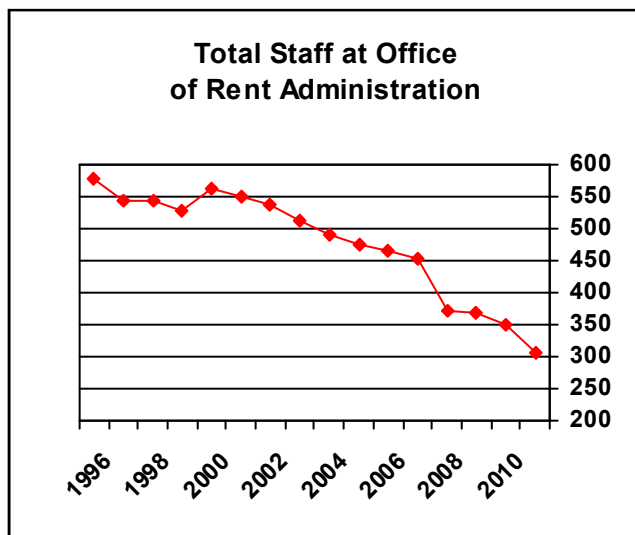
Judith Goldiner, Supervising Attorney of the Legal Aid Society’s Law Reform Project, Civil Practice, observed:

*It can take years to get a result from DHCR. In that time, low-income tenants are paying excessive rents, which they can't afford, and they may even be evicted. Plus, the tenant is trapped in a hostile relationship with their landlord, which can be extremely stressful.*



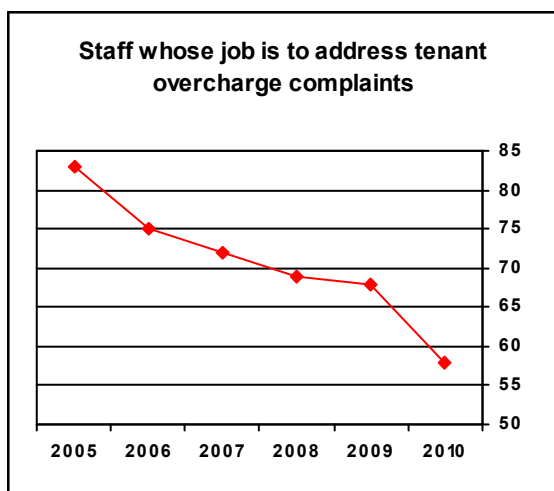
2. **Staffing at DHCR's Office of Rent Administration has been drastically reduced in recent years, at twice the rate of the deregulation of units.** Between 1996 and 2008, the Office of Rent Administration lost more than 36% of its total staff. This cannot be explained simply by the declining number of rent regulated units requiring service. During that same time period between 1996 and 2008, New York City lost about 18% of regulated units -- half the rate that DHCR's Office of Rent Administration was losing staff. Those years saw some of the highest and fastest increases in rents in New York City ever. Thus, DHCR was slashing staff at the Office of Rent Administration during a period in which tenants were most vulnerable to fraudulent rents and in need of strong enforcement.

Figure 5



3. **Cuts in tenant services at DHCR have been disproportionately greater than cuts in landlord services.** Moreover, the staff cuts at DHCR have been disproportionately borne by tenants. Between 2005 and 2010, (the period for which data is available), the numbers of staff handling tenant rent overcharge complaints declined by over 30%. The numbers of DHCR employees handling applications from landlords for rent increases only declined by 21% during the same period.

Figures 6 and 7





**Table 1: Staffing levels at the Office of Rent Administration**

<b>Year</b>	<b>Total staff</b>	<b>Staff addressing rent overcharge complaints by tenants</b>	<b>Staff addressing rent increase applications by landlords</b>
2010	305	58	22
2009	349	68	26
2008	368	69	27
2007	371	72	27
2006	452	75	27
2005	465	83	28
2004	476	*	*
2003	490	*	*
2002	513	*	*
2001	537	*	*
2000	550	*	*
1999	562	*	*
1998	529	*	*
1997	543	*	*
1996	544	*	*
1995	579	*	*

*\*data not available*

*Source: DHCR Office of Rent Administration*

## Analysis: Impact on Affordable Housing

The data summarized above demonstrates that rent fraud is endemic in New York City. Rent fraud is not just the exception. Rather, the results of our study indicate that rent fraud is disturbingly widespread and possibly even a commonplace business strategy for many landlords.

Illegal rent increases deplete the resources of those tenants who can least afford it – low-income, immigrant tenants. Even a small fraudulent monthly overcharge can accumulate over time to thousands of dollars that tenants pay in excess of the legally allowable rent. Illegal rent increases are also a drain on New York’s diminishing affordable housing stock, with many apartments being unlawfully deregulated by landlords without any repercussions.

Furthermore, these results indicate that DHCR’s current enforcement approach is not effective in stemming the tide of rent fraud and the resulting unlawful deregulation of apartments. Landlords openly charge and register illegal rents because they know that DHCR will do nothing about it. Landlords also know, from experience, that very few tenants will ever realize there is a legal violation, much less complain about it. Even if a landlord’s illegality is discovered in a small number of cases when tenants complain, the sheer number of cases where it goes unchecked makes illegal rent increases a highly cost-effective strategy for maximizing profits.

The findings of this study make it clear that DHCR’s current operating procedures are not protecting rent stabilized housing or enforcing the rent stabilization laws.

At the time of writing this report, the state legislature has just renewed New York’s rent regulation laws for a further 4 years and introduced certain strengthening amendments. These recent amendments are in many ways, however, a case of “too little, too late”. New York’s rent laws have not kept pace with the massive losses of affordable housing that New York has seen in recent years through vacancy deregulation and the widespread fraudulent conduct of landlords. The recent amendments to the rent laws, while welcome, are certainly not enough to prevent the future loss of affordable housing, let alone to remedy the losses caused by years of neglect.

Thus, it is more critical than ever that DHCR takes up a more proactive role and implements better communications with tenants in order to protect both low income tenants and New York’s affordable housing stock.



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## Recommendations

Based on the findings of this study, Make the Road New York recommends that DHCR makes the following changes to its practices and procedures:

### **Proactive Enforcement**

DHCR should proactively enforce New York's rent stabilization laws in order to stop ongoing rent overcharges to tenants; to prevent the transformation of illegal rents into legal ones due to the 4-year rule; and to prevent the unlawful deregulation of rent stabilized units. To this end, DHCR should:

1. **Verify rent increases after apartments become vacant:** Since the majority of rent overcharges occur after the vacancy of an apartment, DHCR should automatically check every vacancy increase registered.
2. **Investigate every renewal increase filed with DHCR where that amount is above the RGB allowed increase for the relevant year or renewal period.**
3. **Proactively investigate an entire building if a rent overcharge complaint is confirmed in one apartment:** In buildings where one overcharge complaint has been verified by DHCR, the agency should investigate the entire building's rent histories and alert tenants to the results.
4. **Proactively investigate all buildings owned by landlords where a rent overcharge has been found in one building:** For landlords who have been found to have committed a rent overcharge, DHCR should audit registrations in all buildings in that landlord's portfolio.
5. **Proactively investigate the legality of rents filed and charged to tenants where a landlord fails to file rent registrations and/or files rent registrations retroactively:** DHCR should be investigating all instances where landlords do not file registrations and/or where landlords file rent registrations for years that have already passed.
6. **Enforce the rent freeze provided for by the rent stabilization laws against all landlords who do not file rent registrations.**
7. **Ensure that landlords are taking appropriate MCI increases:** DHCR should investigate whenever a landlord registers an MCI increase that is above the 6% maximum or that is above the amount that DHCR authorized in determination of the landlord's MCI application.
8. **Verify the legitimacy of all IAI's:** To verify that IAI's are being legitimately claimed and registered DHCR should require landlords to produce documentation to verify all IAI increases.

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***DHCR should investigate every renewal increase filed with DHCR where that amount is above the RGB allowed increase for the relevant year or renewal period.***

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## **Proactive Communication with Tenants**

DHCR should proactively reach out to rent stabilized tenants to ensure that they are aware of rent overcharges and how to address them. Specifically, DHCR should:

9. **Regularly communicate with tenants regarding rent registrations and overcharges:** DHCR should send an annual letter to rent stabilized tenants advising them about the rent registration process and how to complain about rent overcharges. This letter should advise tenants of the most recent rent registration filed by their landlord and the actual legal rent at that time, and explain that the tenant can file an overcharge complaint if they are paying more than the legal rent. This letter should also include a FAQ sheet on calculating whether you have been overcharged.
10. **Improve outreach to tenants:** DHCR should improve its outreach so more tenants know of their right to file certain types of administrative complaints.
11. **Collaborate with community-based organizations** that have ties to vulnerable tenant populations. This should include coordinated outreach, especially to new immigrant communities, and the acceptance of complaints from community groups who can alert DHCR to rent fraud because of their work with rent stabilized tenants.
12. **Improve its website and allow tenants to request rent histories online:** DHCR's website should be more user-friendly and allow tenants to obtain the rent history for their apartments. Tenants should be able to request a personal identification number (PIN) to be mailed to them which would then allow them to access their rent history online, as well as information about their case, if applicable.
13. **Require all landlords to post informative signage (in multiple languages) in the lobby of each rent stabilized building:** This signage should explain the functions of DHCR and how a tenant can contact the agency if they suspect a rent overcharge.
14. **Ensure accurate data:** DHCR should obtain tenant verification before making any retroactive changes to the rent registration history. The burden of proving the legitimacy of retroactive changes and registrations should be on the landlord, not on the tenant.

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***DHCR should proactively reach out to rent stabilized tenants to ensure that they are aware of rent overcharges and how to address them.***

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## **Language Access**

New York is a linguistically diverse state: 29% of the state's population over 5 years of age speaks a language other than English at home. More than 13% of the people in New York State – or, more than 2.5 million people – speak English “less than very well” and are Limited English Proficient (LEP). Providing language assistance services is not just good policy, it is the law. Title VI of the federal Civil Rights Act of 1964 already prohibits any recipient of federal funding, including state agencies such as DHCR, from discriminating on the basis of race, color, or national origin. According to the United States Supreme Court, the failure to provide interpretation and translation services to LEP individuals constitutes discrimination on the basis of national origin under Title VI.

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***...the failure to provide interpretation and translation services to LEP individuals constitutes discrimination ...***

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Therefore, DHCR should do the following:

15. **Conduct targeted outreach to immigrant communities.** This should involve:
  - a. expanding outreach to new immigrant communities and creating comprehensive new procedures to increase capacity to field informational calls and complaints in multiple languages;
  - b. providing a variety of informational materials in languages other than English; and
  - c. conducting an outreach campaign to targeted immigrant communities through an annual multi-lingual mailing explaining the new rent increases approved by the RGB and the process to verify the current legal rent of an apartment.
16. **Implement effective tracking of language needs of tenants and maintain records on language services provided:** The primary language of a complaining tenant should be recorded at the time a complaint is filed in order to trigger follow-up communication in the appropriate language. DHCR staff should record the language needs of tenants according to building in order to improve language-appropriate communications with other tenants in the same building. In addition, DHCR should implement record-keeping and monitoring practices to ensure that all new procedures ensure access for LEP New Yorkers.
17. **Hire more qualified bilingual staff and ensure that appropriate bilingual staff are matched with LEP tenants:** DHCR should continue to improve the quality of communication between its staff and LEP tenants. Moreover, DHCR should prioritize matching the language skills of bilingual staff with the language needs of complaining residents.
18. **Ensure that communications about complaints and pending cases are accessible:** DHCR should ensure that follow-up correspondence related to any rent overcharge complaint is made in the preferred language of the tenant or that appropriate interpretation or translation is provided by the agency.

## **Improved Complaint Processing**

DHCR should adopt practices that minimize the impact of overcharges on tenants and that make it easier for tenants to file and pursue complaints. DHCR should:

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***DHCR should adopt practices that minimize the impact of overcharges on tenants and that make it easier for tenants to file and pursue complaints.***

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19. **Reduce the time it takes to process a complaint:** Once a tenant has filed a complaint with DHCR, the agency should expedite processing of the complaint.
20. **Improve the rent overcharge complaint form:** DHCR's complaint form should be changed to include complaints about the registration of illegal rents or a failure to register rents, even where there has been no actual overcharge.
21. **Simplify the format of rent registration histories:** Rent registration histories provided by DHCR should be simplified so that tenants without lawyers can still determine whether they have been overcharged. When rent registration histories are provided, DHCR should also provide information about how to calculate whether there has been an overcharge.
22. **Maintain or increase staffing of staff in the Office of Rent Administration:** DHCR should restore the level of staffing to that of the 1995-1996 fiscal year, in particular the number of staff handling tenant complaints.



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## Endnotes

1. New York City Planning Commission, (1999) *The Newest New Yorkers 1995-1996: An Update of Immigration to the City in the mid-90's*
2. Ingrid Gould Ellen et al (2006) *State of NYC's Housing and Neighborhoods 2005*, Furman Center at NYU.
3. Victor Bach and Tom Waters, (2006) *Making the Rent, 2002 to 2005: Changing Rent Burdens & Housing Hardships Among Low-Income New-Yorkers*, Community Service Society
4. Victor Bach and Tom Waters, (2011) *Housing the City of Immigrants*, Community Service Society
5. US Census Bureau, (2008) *New York City Housing Vacancy Survey*
6. Victor Bach and Tom Waters (2009) *Destabilized Rents*, Community Service Society
7. US Census Bureau, (2008) *New York City Housing Vacancy Survey*
8. See David Jones, (June 29, 2011) '*Rent Stabilization is a lifeline for New York: When housing costs rise the entire city falls*', The Daily News.
9. Currently, the only exception to this four year rule arises where a landlord engages in some sort of fraud with the aim of deregulating an apartment, but the onus to prove such fraud is on a tenant so this may be helpful in only a limited number of cases. See Grimm v. State of New York Division of Housing and Community Renewal, 5 N.Y.3d 358, 2010 WL 4065466 (N.Y.) (2010); Thornton v. Baron, 5 N.Y.3d 175, 800 N.Y.S.2d 118 (2005).

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## Appendix A: Methodology

We used a mixed methods approach to investigate the problem of rent fraud. First, we analyzed DHCR rent registration histories from 200 units in Brooklyn, Queens, the Bronx and Manhattan to identify the registration of illegal rent increases. Second, we analyzed data obtained from DHCR in order to identify changes in staffing over the last two decades. Third, we tested DHCR phone services, examined agency materials and visited agency facilities to determine language accessibility for Limited English Proficient (LEP) tenants. To test language access via telephone, 100 calls were placed to DHCR's designated Spanish language phone line on varying days of the week and at varying times of day. Fourth, we interviewed tenants and tenant advocates about their experiences with DHCR.

### **Sampling**

We used a modified quota sampling model in which we aimed to study a sample that included small, mid-size and large buildings as representative of New York City's rent stabilized housing stock. According to the most recent Housing Vacancy Survey in 2008, 27% of occupied rent-stabilized units in New York City are small with less than 20 units, 55% are mid-sized with between 20 and 100 units and 17% are large with 200 or more.

DHCR's rent histories do not indicate building size. We cross-referenced address information from DHCR rent histories with information on the Department of Housing Preservation and Development online database in order to determine building size. For buildings for which we were able to obtain data on building size, our final sample included 35% units from small buildings, 48% from mid-size buildings and 17% from large buildings. For 43 units included in the sample we were unable to obtain information about building size.

We selected geographical areas in Brooklyn and Queens with large numbers of rent-stabilized buildings. We conducted door-to-door outreach at different times of the day and on different days of the week to identify tenants with whom we could obtain rent histories. We then helped rent stabilized tenants obtain their rent registration histories from DHCR. We supplemented this sample with additional rent registration histories collected by other community organizations from around the city to yield a total sample of 200 units from Brooklyn, Queens, Manhattan and the Bronx.

The buildings we selected to study were not selected because we suspected rental overcharges. In fact, given the complexity of identifying rental overcharges, it would be almost impossible to know prior to researching a building's rent history and rent registrations, whether or not an illegally high rent is being charged.

### **Analytic Samples**

We used the full sample of 200 units for all analyses, except in two instances. For the analysis of the relationship between gaps in rent registration and inflated registered rents, we excluded 24 cases in which it was impossible to determine the existence of an overcharge because landlords had not registered any rents in recent years. For the calculations of multiple irregularities in the same building, we excluded buildings for which we did not have rent histories for multiple units, yielding an analytic sample of 22 buildings.

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## **Identifying discrepancies between legal regulated rent and registered rent**

Our goal in this study was to track rent fraud and measure potential overcharges based only on data that DHCR itself receives from landlords each year, through the annual rent registrations they submit. In order to do so, we measured the discrepancy between the correct legal regulated rent and the registered rent on file each year at DHCR. While an overcharge can also stem from an illegal rent being charged to the tenant and not reported to DHCR (that is, filing false and apparently legal registrations while the tenant is really paying an illegal rent), this study focuses on discrepancies based on registered rents, not leases. This is because we wanted to determine the extent of rent fraud that is being openly reported to DHCR and going unaddressed. (DHCR does not require landlords to submit actual leases.)

To calculate an overcharge, we examined a given rent history for as far back as it could be obtained. We then cross-referenced each successive increase from the rent history with the corresponding RGB increase for that year. The discrepancy between the monthly rental amount listed on the rent history and the amount the rent should be, according to the RGB's increases, was then determined. That amount was multiplied by the number of months a tenant actually paid the unlawfully high rent to determine the exact amount of the potential overcharge.

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## Appendix B: Full text of testimonies

### **Angel Vera, Housing and Environmental Justice Organizer, Make the Road New York**

As a housing and environmental justice organizer at Make the Road New York, my work primarily involves organizing low-income tenants in Queens and Brooklyn. MRNY has a Housing and Environmental Justice Committee at both our Queens and Brooklyn offices. These committees are called “BASTA.” They have approximately 300 members and meet weekly to discuss issues related to housing and environmental justice.



In my work, I come across low-income tenants on a daily basis. In my experience, most tenants have never heard of DHCR before they come to our organization. Whenever we talk about DHCR in committee meetings, new members usually have no idea what DHCR is or what it does. As a housing organizer, I also facilitate tenant meetings at different buildings. It's very rare to meet a tenant who knows about DHCR. Most of the time, nobody at the building meeting has ever heard of the agency.

It's a problem that so few tenants have ever heard of DHCR because a lot of tenants are being illegally overcharged by their landlords and they don't know it, or if they do know, they don't

know what to do about it. The system of rent stabilization is complicated and it's hard for tenants to get information about what their legal rent should be and whether they are being overcharged.

I work with dozens of tenants every year who are being charged too much rent by their landlords and they don't even know it. They come to MRNY with some other question about their housing. I encourage them to request their rent history from DHCR and, once they meet with one of MRNY's lawyers, they realize they're probably paying an illegal rent overcharge.

If tenants do know they're being overcharged, they usually don't know what to do about it. Many times, tenants who are being overcharged or think they're being overcharged stay quiet and don't do anything. Sometimes they try and get help from a local community group, an elected official, or their church. Most of the time, they just decide to vacate the apartment.

Illegal rent overcharges are a big problem in our community. I work with low-income tenants who regularly pay more than 50% of their income in rent. But I have seen tenants who are being overcharged who are paying as much as 70% of their income in rent. This has a significant impact on the economic stability of these tenants and their families.

The rent laws are complicated and most tenants don't know that there's a four-year limitation to do anything about an illegal rent overcharge. The four-year rule is very bad for tenants and allows landlords to get away with illegal rent overcharges because, after four years has gone by, there's nothing the tenant can do. It's very unfair.

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I know tenants who missed the four-year deadline by just a few months and they couldn't do anything to recover the money they were overcharged by their landlords. It's extremely sad to see a tenant realize that he has been illegally overcharged thousands and thousands of dollars by his landlord and then find out that the law does not protect him, because the limitation is four years and it's been four years and two months.

The landlords are the ones committing rent fraud, but DHCR is part of the problem too, because they don't do anything to tell tenants when their landlords are registering illegal rents. In my years as a housing organizer, I have worked with many tenants who are being overcharged. Their landlords register illegally high rents with DHCR, but DHCR never informs tenants that they are being overcharged.

Another problem with DHCR is language access. MRNY works with the Latino immigrant community, so a lot of our members speak little or no English. I encourage Spanish-speaking tenants to call or visit DHCR but the result is generally frustration. When they go in to DHCR's office, it's hard for them to get help in Spanish. Over the phone, there is practically no service in Spanish. Tenants who call the Spanish line almost never get to talk to someone; they just get the answering machine. I have had the same experience as Spanish-speaking tenants: 90% of the time I have called the Spanish line, I get transferred to an answering machine. Sometimes I leave the tenant's phone number but I have never heard of any tenant getting a call back from DHCR. I usually end up making the phone call in English on behalf of the tenant.

Every year, we're losing units of affordable housing in our neighborhoods because landlords get away with charging illegally high rents. Rent overcharges are one of the ways that abusive landlords get to the \$2,500 threshold faster than they legally should be able to. Once that apartment hits that threshold, it's not rent stabilized anymore, and we lose that unit of affordable housing. Holding landlords accountable is an important step towards preserving much-needed affordable housing in our communities, and DHCR needs to do more to hold landlords accountable.

### **Maria de los Santos, Brooklyn Tenant and Member of Make the Road New York**

I live in a building on Menahan St. in Bushwick. I have lived there since 2005. The building has six units and is rent stabilized.

In October 2007 the landlord tried to kick me out because I had called 311. My daughter had just been born; she was only two weeks old at the time. There was no heat or hot water in my apartment and I was getting desperate because my daughter was sick. I tried to call the landlord but I couldn't reach him. So I called 311. The landlord was so angry that I had called 311 that he told me to take my things and get out.

I had heard that Make the Road New York helps people who have problems with housing so I went there to see if they could help me. The lawyers at MRNY told me that the landlord could not kick me out just like that and they helped me stay in my apartment. They also explained to me that I live in a rent regulated building. They explained my rights and told me to keep copies of all the rent receipts in case I had any other problems in the future.





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That was three years ago in the fall of 2007. Two years later, in October 2009, I went back to MRNY because I suspected that the landlord was charging me too much rent. When I had that first problem with the landlord, he raised the rent from \$950 to \$1000 a month. After that, every time I signed a lease, the landlord raised the rent however much he wanted to and it was more than the legal amount. I looked for all my rent receipts and I brought all the documentation I could find to show the lawyers at MRNY.

In October 2009, we submitted a complaint to DHCR. As soon as the landlord found out about the case at DHCR he gave me a new lease, lowered the rent and wrote me a check for \$3,625, which is how much he said he owed me. But the lawyers at MRNY calculated that he owed me much more than that. The lawyers told me that it would take longer to get the money through DHCR, but if I wanted to wait and try and get the whole amount, then I should not cash the check from the landlord.

The landlord was furious that I had submitted a complaint to DHCR. He came to my door and yelled at me in front of my daughter. I told him that he did not have any right to insult me, especially in front of my child. He said that if I didn't like it, I could leave. But this just made me more determined to stand up for what's right.

I had to wait a very long time to get any response from DHCR. I didn't cash the check from the landlord because I wanted him to pay me the whole amount, but it was hard to wait for so long because I really need the money. Last Christmas I couldn't afford to buy toys for my daughter and I was very tempted to cash that check, but I didn't. When I finally did cash the check from the landlord, it didn't even clear because of insufficient funds.

We had no response from DHCR at all for more than a year. That whole time, the landlord continued to harass me and pressure me to drop the case. It's not fair that I had to put up with that kind of harassment just because DHCR was taking so long to review my case and it was hard to wait for so long because I really needed the money. A year and a half after I filed my complaint, I finally got an answer from DHCR in March 2011.

DHCR found that I had been overcharged \$3,444 and that the landlord has to pay me treble damages, so he owes me a total of \$10,361.53. The problem is that DHCR included the check from the landlord for \$3,625 in their calculations of how much he still owes me, even though my lawyer told them clearly that the check had not cleared. DHCR said the landlord owed me less money than actually he does because of that mistake. Now my lawyer is working to get DHCR to correct that mistake and make sure my landlord pays me the full amount. I don't know how long it will take to get an answer and I'm worried that I'll have to wait another year and a half.

The landlord continues harassing me. He's always rude and angry. He comes to my work place and says things like "If you don't like it, you can leave!" in front of my co-workers and customers. And the longer I have to wait for an answer from DHCR, the longer I have to put up with this type of abuse.

Before talking to the lawyers at MRNY, I had never heard of DHCR. I didn't even know that I lived in a rent regulated building. I would not have known to keep copies of my rent receipts and it would have been extremely difficult to handle a case at DHCR on my own. I don't think it would have been possible for me as a tenant, without an organization like MRNY, to guide me through the process. I'm glad that MRNY was able to help me with my case, but it's not fair that other tenants don't get the help they need and deserve without an organization like MRNY to advocate for them. All tenants should be protected by DHCR from illegal rent overcharges.

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## **Luis Pelaez, Queens Tenant and Member of Make the Road New York**

I live on 88th Street in Jackson Heights, Queens. I am originally from Ecuador but I've been in this country for 11 years. I came here because of the American dream: I wanted to work hard and make sure that my children have opportunities that I never had. I have three children who live in Ecuador with my wife. Even though they're far away, I'm in touch with them every day and I still have hopes that they'll have a better life than I did.



I work in demolition but last fall I began to have economic problems and I was not able to pay my rent. In January, I had to stop working because I had an accident and things got even worse. My landlord took me to housing court. I didn't know what to do, so I went to Make the Road New York looking for help. They helped me get my rent history from DHCR. When we looked at the rent history, we realized that there was an illegal rent overcharge. In other words, my landlord had raised the rent more than was legally allowed.

I moved into my building in 2005 but the lease was not in my name. In 2006, they put the lease in my name but they raised the rent from \$1,139 to \$1,550. It's not legal to raise the rent so much, so I have been paying an illegally high rent ever since then. My current rent is \$1,688.30 but I should not be paying more than \$1,489.59. I have been overcharged almost \$200 a month for more than four years, which means that, by the time I stopped paying my rent last October I had been overcharged more than \$9,000.

Now I'm in housing court for having gotten behind in my rent. As of February 2011, my landlord says I owe a total of \$8,441.50, but this is based on a rent which has been illegally high for years. And my lawyer has calculated that I have overpaid more than \$9,000, which is more than I owe my landlord in unpaid rent.

Before I went to Make the Road New York, I had no idea that I was being charged too much rent. I had never even heard of DHCR so it never would have occurred to me to go to DHCR for help. By the time I realized I had been overcharged, it had been happening for more than four years and it was too late for me to do anything about it. My attorney explained to me that, after four years, the illegal rent becomes the legal rent. If I had known about the illegal rent overcharge sooner, I could have done something about it. I would have been able to get my money back and maybe even collect damages from my landlord. Now, because it's been more than four years, my landlord will probably get away with overcharging me for six years and there's nothing I can do about it.

I am not the only person in my building who has had this kind of problem. There was a gentleman who lived in my building for 35 years. He told me that they wanted to kick him out because he was paying a very low rent. The landlord looked for all kinds of excuses to evict him until, sadly, he died about six or seven months ago. There were other people living in the apartment with him but, since the lease was not in their name, those tenants were evicted so that the landlord could raise the rent. The previous tenant was paying \$700 a month. The new tenants are paying \$1,650, which is more than double the old rent. It seems to me that this is an illegal rent overcharge, the same thing that happened to me. But the new tenants are too scared to do anything because they don't want to lose their housing.

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If I had been paying the legal rent this whole time, I never would have gotten into these economic problems in the first place. I would have been able to pay my rent and I would not have been taken to housing court. Because of the illegal rent overcharge, my American dream has turned into a nightmare. I have also realized that the law is unfair to tenants, especially the four-year rule, which basically means that, after four years of overcharging a tenant, the landlord gets away with it and that rent becomes the legal rent. There are a lot of tenants who are being exploited by their landlords in this way and don't even know that there is a government agency which is supposed to be protecting our rights as tenants. The laws to protect tenants should be stronger and the government authorities should do more to stop the abusive practice of illegal rent overcharges.

### **Leandra Requena, Queens Tenant and Member of Make the Road New York**



I have been living at 41-12 Elbertson Street for several years. Before my husband Jorge and I got married we both lived in the same building but in different apartments. I lived in apartment 1D and he lived in apartment 5H. After we got married, we decided to share one apartment. In 2008, we moved into apartment 5H. We decided on 5H because it was cheaper, even though it was in worse condition than 1D.

There were a number of problems in the apartment. In the kitchen, the stove, the refrigerator, the kitchen cabinet, and the fluorescent light fixture were all broken. The overhead light in the bedroom didn't work either, so we had to use standing lamps. This was especially hard in the kitchen because the kitchen is so small. There was a hole in the bathroom door, the bathroom sink and floor tiles were broken, and

the fixtures in the bathroom were stained and rusty. The apartment had not been painted for many years. When we took over the lease, they fixed the stove and the refrigerator but they didn't do anything else. When we asked about making other repairs to the apartment, the manager told us that we could make the repairs ourselves and that if we wanted them to make repairs, we would have to pay more rent.

We had had a long history of problems with the manager and the real estate company: it was not the first time we had requested repairs. So I did some research to see what I could do about the problems in my building. I found out about DHCR and, since I thought DHCR was supposed to protect tenants from landlords' abusive practices, I went to DHCR at the beginning of 2008. I explained all the problems to someone there. The person I spoke to told me to fill out a form and he gave me the form to fill out. I did exactly what he told me to do, because I trusted that he knew what he was talking about. But it turns out that it was the wrong form. What I should have filled out was an Application for a Rent Reduction because of all the problems in the apartment. What I actually filled out was a request to see if there was an illegal rent overcharge. Six or seven months later I received a letter from DHCR saying that I was paying the correct amount of rent, that there was no overcharge. But that was not my problem in the first place!

In November 2008 I wrote a letter detailing all the problems with the apartment and sent it to the landlord to see if he would respond. In December 2008 I filled out an Application for a Rent Reduction. I never got any response from DHCR. I called over and over. Many times I couldn't even get through. When I was able to speak to someone about my case, they always said they couldn't do anything until they sent an inspector but they never sent the inspector. I asked them how it was possible for so much time to have gone by without them sending an inspector and all they said was that they didn't have enough inspectors.

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In 2009 I found out that I could also call 311 to make a complaint with the City. I called 311 and HPD immediately sent an inspector. After that, I withheld my rent and triggered an eviction case in housing court. In housing court, the judge immediately ordered the owner to make the repairs without raising the rent. Although the owner was very angry about it, he made all the repairs.

Once I called HPD we were able to get the help we needed, but we should have been able to get that help from DHCR in the first place. As a tenant, it's extremely frustrating to know that DHCR is supposed to be protecting our rights as tenants but in reality, is not protecting us at all. And not only that: because of DHCR's incompetence, my husband and I were living in that apartment for more than a year, putting up with problems in the apartment that should have been fixed right away. Plus, while we were waiting for a response from DHCR, we were paying more than was fair for us to pay, given the poor condition the apartment was in. In the end DHCR never sent an inspector.

## Appendix C: Sample Rent History

STATE OF NEW YORK  
DIV. OF HOUSING AND COMMUNITY RENEWAL  
GERTZ PLAZA  
92-31 UNION HALL STREET  
JAMAICA, NY 11433

FORM FL/DR-1.0 (8/2010)

Request Date: 11/23/2010  
Request No.: [REDACTED]  
Request for Apt. Data

Subject Premises: [REDACTED]  
[REDACTED]  
BROOKLYN, NY 11237

Number of Rooms: N/A

Building Id Number: [REDACTED]

### \* REGISTRATION APARTMENT INFORMATION \*

The enclosed Apartment Registration Information is sent to you at your request. It shows information on file with the NYS Division of Housing and Community Renewal (DHCR) for the requested apartment as of NOVEMBER 23, 2010.

An "(I)" appended to the end of the registration year indicates that year as being the Initial Registration for the apartment. A "(D)" appended to the end of the registration year indicates that year as being the Vacancy Decontrol Registration for the apartment. An "(A)" appended to the end of the registration year indicates that an amendment to the annual apartment registration filed by the owner has been recorded.

The apartment status section of the report indicates the reported nature of the occupancy of the apartment. The following designations are used:

RS = Rent stabilized  
V = Vacant  
PE = Permanently Exempt

RC = Rent Controlled  
TE = Temporarily Exempt

A "W" appended to the end of the Legal Regulated Rent indicates that the rent amount is paid weekly instead of monthly.

The filing date is the date when the registration for the apartment was received by DHCR. An "NC" in this column indicates that the filing date was not recorded on the computer file.

**Advisory Note:** This document merely reports the statements made by the owner in the registration(s) filed by such owner and does not reflect changes in rent occurring after April 1 of each year. DHCR does not attest to the truthfulness of the owner's statements or the legality of the rents reported in this document. Furthermore, this document does not necessarily reflect modifications to the lawful rent or other registration information as a result of orders issued by DHCR, or a finding that a registration has not been filed.

If you need further assistance,  
contact the office listed above  
or the DHCR Rent Infoline at  
(718) 739-6400.

To: Occupant  
[REDACTED]  
BROOKLYN, NY 11237



STATE OF NEW YORK  
DIV. OF HOUSING AND COMMUNITY RENEWAL  
GERTZ PLAZA  
92-31 UNION HALL STREET  
JAMAICA, NY 11433

FORM FL/DR-1.0 (8/2010)

Request Date: 11/23/2010  
Request No.: [REDACTED]  
Request for Apt. Data

Subject Premises: [REDACTED]  
BROOKLYN, NY 11237

Number of Rooms: N/A

Building Id Number: [REDACTED]

\* REGISTRATION APARTMENT INFORMATION \*

Reg Year	Apt Stat	Filing Date	Legal Regulated Rent	Prefer. Rent	Actual Rent Paid	Reasons Differ./ Change	Lease Began/Ends
1984							
1985							
1986							
1987							
1988	PE	08/04/1988		EXEMPT			
1989	RS	08/02/1989	500.00				02/10/1989
	TENANT:	[REDACTED]				FAIRMRKT	02/09/1990
1990(A)	RS	09/23/1991	500.00				04/01/1990
	TENANT:	[REDACTED]				LEAS/RNL	03/31/1991
1991							
1992							
1993							
1994							
1995	RS	07/10/1995	600.00				10/15/1994
	TENANT:	[REDACTED]					10/14/1995
1996	RS	06/19/1996	600.00				
	TENANT:	[REDACTED]					

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To: Occupant  
[REDACTED]  
BROOKLYN, NY 11237

STATE OF NEW YORK  
DIV. OF HOUSING AND COMMUNITY RENEWAL  
GERTZ PLAZA  
92-31 UNION HALL STREET  
JAMAICA, NY 11433

FORM FL/DR-1.0 (8/2010)

Request Date: 11/23/2010  
Request No.: [REDACTED]  
Request for Apt. Data

Subject Premises: [REDACTED]  
[REDACTED]  
BROOKLYN, NY 11237

Number of Rooms: N/A

Building Id Number: [REDACTED]

\* REGISTRATION APARTMENT INFORMATION \*

Reg Year	Apt Stat	Filing Date	Legal Regulated Rent	Prefer. Rent	Actual Rent Paid	Reasons Differ./ Change	Lease Began/Ends
1997	RS	06/27/1997	600.00				02/15/1997 02/15/1999
TENANT: [REDACTED]							
1998	*REG NOT FOUND FOR SUBJECT PREMISES*						
1999	*REG NOT FOUND FOR SUBJECT PREMISES*						
2000	*REG NOT FOUND FOR SUBJECT PREMISES*						
2001	RS	08/07/2001	650.00				01/15/1999 12/14/2001
TENANT: [REDACTED]							
2002	RS	02/12/2003	750.00				12/15/2001 12/14/2002
TENANT: [REDACTED]							
2003	VA	01/29/2004	900.00			VAC/LEAS	
2004	VA	03/24/2005	1000.00				
2005	*REG NOT FOUND FOR SUBJECT PREMISES*						
2006	VA	09/24/2008	1950.00		0.00	VACANT UN VAC/LEAS MCI IMPRVMT	
2007	RS	09/24/2008	1950.00		1400.00	PREF RENT VAC/LEAS	02/01/2007 01/31/2008
TENANT: [REDACTED]							

Advisory Note: This document merely reports the statements made by the owner in the registration(s) filed by such owner and does not reflect changes in rent occurring after April 1 of each year. DHCR does not attest to the truthfulness of the owner's statements or the legality of the rents reported in this document. Furthermore, this document does not necessarily reflect modifications to the lawful rent or other registration information as a result of orders issued by DHCR, or a finding that a registration has not been filed.

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(718) 739-6400.

To: Occupant

[REDACTED]  
BROOKLYN, NY 11237

STATE OF NEW YORK  
DIV. OF HOUSING AND COMMUNITY RENEWAL  
GERTZ PLAZA  
92-31 UNION HALL STREET  
JAMAICA, NY 11433

FORM FL/DR-1.0 (8/2010)

Request Date: 11/23/2010  
Request No.: [REDACTED]  
Request for Apt. Data

Subject Premises: [REDACTED]  
BROOKLYN, NY 11237

Number of Rooms: N/A

Building Id Number: 321333

\* REGISTRATION APARTMENT INFORMATION \*

Reg Year	Apt Stat	Filing Date	Legal Regulated Rent	Prefer. Rent	Actual Rent Paid	Reasons Differ./ Change	Lease Began/Ends
2008	RS	10/17/2008	1950.00		1400.00	PREF RENT VAC/LEAS	02/01/2007
TENANT: [REDACTED]							
2009	*REG NOT FOUND FOR SUBJECT PREMISES*						

APARTMENT SERVICES:

BUILDING SERVICES: BELL & BUZZER SYSTEM

Advisory Note: This document merely reports the statements made by the owner in the registration(s) filed by such owner and does not reflect changes in rent occurring after April 1 of each year. DHCR does not attest to the truthfulness of the owner's statements or the legality of the rents reported in this document. Furthermore, this document does not necessarily reflect modifications to the lawful rent or other registration information as a result of orders issued by DHCR, or a finding that a registration has not been filed.

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or the DHCR Rent Infoline at  
(718) 739-6400.

To: Occupant

[REDACTED]  
BROOKLYN, NY 11237

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## Appendix D: Tables

Summary Table 1: Relative Odds of A Unit Having Inflated Registered Rents Given Gaps in Registration, After Adjusting for Building Size

	exp. Betas	standard error
Gaps in registration	2.609147*	1.167276
Number of units in building	.9947072*	.0027845
Chi-square; df	9.96; 2	
Notes: Results from binomial logistic regression model. Relative odds (exponentiated betas) are presented. † $p \leq .10$ , * $p \leq .05$		

Summary Table 2: OLS Regression Predicting Number of Irregularities in Any Given Unit

	B	standard error
Problems in building	.0791026*	.0281126
Number of units in building	-.0022212**	.0007074
Number of units in building with rent history information available	-.0453275	.0341936
Constant	.7795618	.1706306
R2	0.1783	
Notes: † $p \leq .10$ , * $p \leq .05$ , ** $p \leq .01$		